IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

RCRev..No. 419 of 2006()

{R.C.A.NO.21/2004 OF THE DISTRICT COURT, KALPETTA
IN R.C.P.NO.5/2002 OF THE MUNSIFF COURT, KALPETTA}
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REV.PETITIONERS/APPELLANTS/RESPONDENTS :
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1. BALAN, S/O.ACHUTHAN,
KIZHAKUNIYIL HOUSE, POST ULLIARY,
KOILANDY, KOZHIKODE DIST.

2. LAKSHMI, D/O.ACHUTHAN,
KUNNUMMEL HOUSE, POST CHERUPALAM,
POONOOR NARIKUNI, KOZHIKODE DIST.

3. SIVAJI, S/O.K.ACHUTHAN,
S.S.BHAVAN, POST CHELANNUR, BALUSSERY,
KOZHIKODE DIST.

4. NARENDRAN, S/O.K.ACHUTHAN,
KIZHAKUNIYIL HOUSE, POST ULLIARY,
KOILANDY, KOZHIKODE DIST.

BY ADV. SRI.A.SUDHI VASUDEVAN

RESPONDENT: RESPONDENT/PETITIONER:

P.SREEDHARAKURUP, AGED 60 YEARS,
S/O.NARAYANA KURUP, PAADMALAYATHIL,
VILLIAPPILLI AMSOM, MAYYANNOOR DESOM,
VADAKARA TALUK.

BY ADV.SRI.R.PARTHASARATHY

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ALONG WITH RCR NO.420/2006 ON 11/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

R.C.R.No.419 & 420 of 2006

Dated this the 11th day of December, 2006.

O R D E R

Udayabhanu, J.

The revision petitioners are the tenants in occupation of the concerned premises, and under orders of eviction under Section 11 (4)(iv) of Kerala Buildings (Lease and Rent Control) Act [Act 2 of 1965] {hereinafter referred to as 'the Act'}.

2. The courts below concurrently found in favour of the landlord and directed the revision petitioners to surrender vacant possession of the building on or before 30.9.2003. It was also directed that the landlord shall reconstruct the building within one year after getting possession and the tenants shall have the first option to get the reconstructed building allotted to them, with a liability to pay fair rent.

3. It is the contention of the revision petitioners that there was no offer in the rent control petitions that they will be provided accommodation after reconstruction. It is also contended that the proposed

reconstructed building is not suitable for the business conducted by the petitioners.

4. We find that the Rent Control Court has specifically directed as to the time limit within which the reconstruction has to be completed and also provided the first option to the petitioners with liability to pay fair rent as per the statutory stipulation. Hence this contention has no merit.

5. So far as the contention that the premises proposed to be reconstructed would not be suitable to the business being conducted by the petitioners - one of the petitioners is conducting a provision store and the another is conducting a hotel, we find that such a ground was not raised before the courts below. The petitioners are not entitled to raise a fresh ground at the revisional stage.

6. On a perusal of the judgments of the courts below, we find that the premises were inspected by the commissioner and the commissioner reported that the building is a tiled one and the walls had cracks and that in

the locality there are a number of concrete buildings and that the place is a commercially important one. This court as well as the Supreme Court have held on a number of occasions that the 'condition of the building' is a larger concept which includes consideration of social surroundings and allied factors. The revision petitioners are not entitled to confine the landlord to the ownership of the present tiled and dilapidated building. We find no merit in these revision petitions and hence the same are dismissed, confirming the findings of the courts below.

The petitioners will surrender vacant possession of the building within two months from today and from the date of getting possession, the landlord shall reconstruct the building within one year therefrom.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(K.R.UDAYABHANU)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
K.R.UDAYABHANU, JJ.

R.C.R.No.419 & 420 of 2006

O R D E R

11th December, 2006.